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OFFICE OF PETITIONS

In re Application of Ming	:	
Application No. 10/696,707	:	Decision on Petition
Filing Date: October 29, 2003	:	
Attorney Docket No. 6447	:	

This is a decision on the petition filed March 27, 2006, under 37 CFR 1.181, or in the alternative, under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

Facts:

A Notice of Allowance was mailed on May 20, 2005. The Notice required payment of \$700 for the issue fee and did not require payment of a publication fee. The Notice set a statutory period for reply of three (3) months.

An Issue Fee Transmittal Form ("Form 1") and check ("Check 1") appear to have been mailed to the Office on August 17, 2005. The Certificate of Mailing is dated August 17, 2005, but is unsigned.

An Issue Fee Transmittal Form ("Form 2") and check¹ ("Check 2") were mailed to the Office on August 18, 2005.

The Office received Form 1 and Check 1 on August 19, 2005.

The Office received Form 2 and Check 2 on August 23, 2005.

The Office is not authorized to accept a total of \$1,400 for the issue fee when the amount owed is \$700. Therefore, per language on Form 2, the second payment of \$700 was credited to petitioner's deposit account.

Petitioner's bank subsequently failed to honor Check 1.

¹ The check number for Check 1 was 061179. The check number for Check 2 was 061216.

A Notice of Abandonment was mailed on February 22, 2006.

Discussion:

Form 1 was received on August 19, 2005. Form 1 authorized the Office to charge any necessary fees to petitioner's deposit account. On August 19, 2005, petitioner's deposit account had a balance of \$2,700. Therefore, even though the first check bounced, the issue fee was timely paid since the Office had the authority to charge the fee to petitioner's deposit account on August 19, 2005.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition under 37 CFR 1.181 to withdraw the holding of abandonment has been granted, the petition under 37 CFR 1.137(b) is unnecessary. Therefore, the petition under 37 CFR 1.137(b) is dismissed as moot. A fee has not been charged for the petition under 37 CFR 1.137(b).

The Office has charged \$700 to petitioner's deposit account in order to recover the \$700 applied to the deposit account.

Since petitioner has not proven that Check 1 did not "bounce," the Office will charge the \$50 processing fee for payments not honored by a bank to petitioner's deposit account.

The Office of Initial Patent Examination will be informed of the instant decision and the application will be issued as a patent in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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